

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
CHRISTIAN HOLINKA,

Index No.: 114120-06

Plaintiffs,

Hon. Joan Madden

- against -

A.W. CHESTERTON, et al.,

CERTIFICATION

Defendants.
-----X

Pursuant to 22 NYCRR 130-1.1, the undersigned, an attorney admitted to practice in the courts of New York State, certifies that, upon information and belief and reasonable inquiry, the contentions contained in the annexed document are not frivolous.

Dated: New York, NY
August 20, 2007

Respectfully submitted,

BY: 
Carol M. Tempesta

**MARKS, O'NEILL, O'BRIEN
& COURTNEY, P.C.**
Attorneys For Defendants
**VWR INTERNATIONAL, INC. AND
UNIVAR USA INC.**
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Hon. Joan Madden

**AFFIRMATION IN SUPPORT
OF MOTION
IN LIMINE TO PRECLUDE
BARRY CASTLEMAN AND
DOUGLAS POHL**

Carol M Tempesta, an attorney admitted to practice before the Courts of the State of New York affirms the truth of the following pursuant to CPLR §2106 upon information and belief based upon the records maintained in the office of Marks, O'Neill, O'Brien & Courtney, P.C. attorneys for Defendants VWR International Inc. and Univar USA Inc.

1. I am associated with the firm of Marks, O'Neill, O'Brien & Courtney, P.C., attorneys for Defendants VWR International, Inc. and Univar USA Inc.

2. I respectfully submit this Affirmation in support of Defendants', VWR International, Inc. ("VWR") and Univar USA Inc. ("Univar"), Baxter Healthcare Corporation (alleged to be a successor in interest to American Hospital Supply Corp. and American Scientific Products) ("Baxter"), ManorCare Health Services, Inc. (alleged to be a successor in interest to Central Scientific Company, a division of Cenco, Inc.) ("ManorCare") and Fisher Scientific International Inc. ("Fisher") (collectively, "Defendants"), Inc.'s motion *in limine* to preclude the testimony of Dr. Barry Castleman and Dr. Douglas Pohl at the trial of this action which is scheduled to commence on September 12, 2007, before the Honorable Joan Madden.

3. On or about April 13, 2007, Plaintiffs served an Expert Witness List in this action, identifying Dr. Barry Castleman and Dr. Douglas Pohl as potential expert witnesses at trial.

Both Dr. Castleman and Dr. Pohl are being offered as purported state-of-the-art witnesses to testify concerning defendant's historical knowledge of the alleged hazards of asbestos, as well as the levels at which asbestos will produce diseases. As state-of-the-art witnesses, Dr. Castleman and Dr. Pohl purport to place scientific knowledge in a historical context, supposedly focusing on the development of medical and scientific information concerning asbestos-related diseases. Dr. Pohl holds degrees limited to the field of pathology. Dr. Castleman's degrees are limited to chemical engineering, environmental engineering, and public health. Neither Dr. Pohl nor Dr. Castleman is an epidemiologist, toxicologist, or an industrial hygienist. A copy of Plaintiff's Expert Witness List is annexed hereto as Exhibit "A."

4. Dr. Castleman was previously deposed in connection with the asbestos litigation on April 12, 2004. A copy of Dr. Castleman's Deposition Transcript is annexed hereto as Exhibit "B."

5. Dr. Pohl was previously deposed in connection Gardea v. Able Supply Co., et al. on Sept. 29, 2005. A copy of the Deposition Transcript is annexed hereto as Exhibit "C".

6. Dr. Pohl's qualifications as an expert were addressed in Benson v. U.S., Docket No. 02-CV-6-B-S, District of Maine (May 2002), a copy of which is annexed hereto as Exhibit "D"

7. As more fully set forth in the annexed memorandum of law, Defendants respectfully move *in limine* to preclude any and all testimony of Dr. Castleman and Dr. Pohl on the grounds that:

- (a) Dr. Castleman and Dr. Pohl are not qualified to interpret the content of collected articles, or to explain the underlying scientific principles, because they lack training in fields such as medicine, toxicology, epidemiology, engineering and others.

- (b) Dr. Castleman and Dr. Pohl's opinions are not the proper subject of expert testimony. To the extent that they are capable of reciting the opinions or conclusions expressed in collected articles, the jury is just as capable of obtaining the same information without their assistance; and
- (c) The articles upon which Dr. Castleman purports to rely and those defendants expect Dr. Pohl will rely are neither of the kind accepted as the proper basis of expert opinion, nor demonstrably reliable. The articles are unauthenticated hearsay and the doctors' testimony regarding them should not be admitted into evidence.

8. Dr. Castleman has already been precluded from testifying along these very lines in a number of jurisdictions. A copy of Rutkowski v. Occidental Chem. Corp., No. 83 C 2339, 1989 WL 32030 (N.D. Ill. Feb. 16, 1989) is annexed hereto as Exhibit "E"

9. Similarly, the Transcript of the proceedings in Polito v. DaimlerChrysler Corp., Index No. 1-2001-008216, filed in the New York Supreme Court, Monroe County, before Justice Raymond E. Cornelius, is annexed hereto as Exhibit "F."

WHEREFORE, it is respectfully requested that for the reasons set forth in the annexed memorandum of law, the motion of Defendants to preclude the testimony of Dr. Barry Castleman and Dr. Douglas Pohl be granted in its entirety, together with such other and further relief as this Court deems just and proper.

Dated: New York, New York
August 20, 2007

Respectfully submitted,

BY: 
Carol M. Tempesta

**MARKS, O'NEILL, O'BRIEN
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Plaintiff,

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-against-

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**MEMORANDUM OF LAW IN SUPPORT OF
DEFENDANTS MOTION *IN LIMINE* TO PRECLUDE THE
THE TESTIMONY OF BARRY CASTLEMAN AND DOUGLAS POHL**

PRELIMINARY STATEMENT

Defendants, VWR International, Inc. ("VWR") and Univar USA Inc. ("Univar"), Baxter Healthcare Corporation (alleged to be a successor in interest to American Hospital Supply Corp. and American Scientific Products) ("Baxter"), ManorCare Health Services, Inc. (alleged to be a successor in interest to Central Scientific Company, a division of Cenco, Inc.) ("ManorCare") and Fisher Scientific International Inc. ("Fisher") (collectively, "Defendants") submit this memorandum of law in support of its motion *in limine* to preclude the testimony of Dr. Barry Castleman and Dr. Douglas Pohl at trial.

Plaintiff's counsel has designated Dr. Barry Castleman and Dr. Douglas Pohl as expert witnesses at trial. Both Dr. Castleman and Dr. Pohl are being offered as purported state-of-the-art witnesses to testify concerning defendants' historical knowledge of the alleged hazards of asbestos, as well as the levels at which asbestos will produce diseases. See Plaintiffs' Expert Witness Lists, Defendant's Affirmation in Support, Exhibit "A." As state-of-the-art witnesses, Dr. Castleman and Dr. Pohl purport to place scientific knowledge in a historical context, supposedly focusing on the development of medical and scientific information concerning asbestos-related diseases. Dr. Pohl holds degrees limited to the field of pathology. Dr. Castleman's degrees are limited to chemical engineering, environmental engineering, and public health. Neither Dr. Pohl nor Dr. Castleman is an epidemiologist, toxicologist or an industrial hygienist.

Dr. Castleman has compiled printed materials allegedly relating to the hazards of asbestos exposure dating back to the late nineteenth-century and, based on his review of these documents, represents that they are capable of interpreting the content of these documents and testifying to their significance with respect to the Defendant's knowledge of the hazards of

asbestos. While Dr. Castleman may have collected an impressive number of articles about asbestos, this demonstrates only that he is a proficient librarian and does not demonstrate that he is qualified to testify concerning the substance of these documents, or to the impact they had when they were published.

Plaintiffs have not specifically identified the materials on which Dr. Pohl relies as a basis for his testimony. Nonetheless, to the extent that he relies on a "library" of research similar to that relied on by Dr. Castleman, testimony by Dr. Pohl should be excluded because it does not demonstrate that he is qualified to testify regarding the content of the documents, the impact they had when they were published, or their significant with respect to the Defendant's knowledge of the hazard of asbestos.

As set forth more fully below, any state-of-the-art expert testimony by Dr. Castleman and Dr. Pohl should be precluded because:

1. The methodology upon which Dr. Castleman and Dr. Pohl purport to rely is not the kind generally accepted in their field, and therefore does not meet the Frye standard;
2. Dr. Castleman and Dr. Pohl are not qualified to interpret the content of the articles collected, or to explain the underlying scientific principles, because both witnesses lack training in fields such as toxicology, epidemiology, industrial hygiene and others specialties;
3. The opinions to be offered by Dr. Castleman and Dr. Pohl are not the proper subject of expert testimony. To the extent that they are capable of reciting the opinions or conclusions expressed in collected articles, the jury is just as capable of obtaining the same information without their assistance; and
4. The Articles upon which Dr. Castleman purports to rely, and to the extent in which Dr. Pohl relies on similar documents, are neither of the kind accepted as the proper basis of expert opinion, nor demonstrably reliable. The Articles are unauthenticated hearsay and testimony regarding them should not be admitted into evidence.

Based on the foregoing, it is respectfully requested that the motion of Defendants to preclude the testimony of Dr. Barry Castleman and Dr. Douglas Pohl be granted in its entirety.

STATEMENT OF FACTS

In this products liability case, plaintiff Christian Holinka ("Plaintiff") alleges that Defendants¹ (or their alleged respective predecessors) supplied Bunsen burner pads and heat-resistant mittens to various laboratories in which Plaintiff studied, researched, and/or worked over a thirty year period. Plaintiff claims that his exposure to asbestos fibers contained within those two products caused him to develop mesothelioma.

On April 13, 2007, Plaintiffs served their Expert Witness List indicating that either Dr. Castleman or Dr. Pohl will testify as to state-of-the art issues. The Expert Witness List indicates that Dr. Pohl "may testify as to the propensity of various asbestos containing products to release asbestos dust into the atmosphere, the levels at which asbestos will produce various diseases, as well as the propensity of all fiber types to produce disease." The Expert Witness List further indicates that Dr. Castleman "may testify as to the propensity of various asbestos containing products to release asbestos dust into the atmosphere, as well as the level as which asbestos will produce various diseases." See Defendant's Affirmation in Support, Exhibit "A." The disclosure does not indicate that either Dr. Castleman or Dr. Pohl can or may provide any expert evidence as against any specific Defendant nor does it indicate that either has formulated any expert opinion as to any Defendant specifically, nor has there been any disclosure to date indicating that they can or may provide any expert evidence as against any particular Defendants.

¹ However, Univar USA Inc. contends that it is not a successor to the lab supply business of Van Waters & Rogers.

ARGUMENT

POINT I

**THE TESTIMONY OF DR. CASTLEMAN AND DR. POHL SHOULD
BE PRECLUDED BECAUSE THEY ARE NOT QUALIFIED TO RENDER
THE EXPERT OPINIONS IDENTIFIED BY PLAINTIFFS**

An “expert should be possessed of the requisite skill, training, education, knowledge or experience from which it can be assumed that the information imparted or the opinion rendered is reliable.” Matott v. Ward, 48 N.Y.2d 455, 459, 423 N.Y.S.2d 645, 647 (1979). While formal education is not necessary, an expert must be qualified through long observation and actual experience. Price by Price v. New York City Hous. Auth., 92 N.Y.2d 553, 559, 684 N.Y.S.2d 143, 146 (1998) (citation omitted). The scope of an expert’s testimony must be limited to his area of expertise. Smith v. Woods Constr. Co., 309 A.D.2d 1155, 1156, 764 N.Y.S.2d 749, 751 (4th Dep’t 2003) (“a medical expert is not qualified as a ballistics expert, and a metallurgist may not testify on dynamics and forces.”) (citations omitted).

Neither Dr. Castleman nor Dr. Pohl is qualified to render opinions regarding the dangers of asbestos, safe exposure levels, and levels at which asbestos exposure will cause disease by the degrees that they each hold or by “long observation and actual experience.” Price, 92 N.Y.2d at 559, 684 N.Y.S.2d at 146. As stated above, Dr. Castleman is not a medical doctor, toxicologist, epidemiologist or industrial hygienist and has no expertise in risk assessment. See Dr. Castleman’s Deposition, April 2004 at p. 15-16, attached hereto as Exhibit “B”. Although Dr. Pohl has a medical degree, he is admittedly not an expert in the fields of pulmonology, oncology, epidemiology, or industrial hygiene. See Deposition Testimony of Dr. Douglas A. Pohl, Gardea v. Able Supply Co., et al., Sept. 29, 2005, Defendant’s Affirmation in Support,

attached hereto as Exhibit "C" at pp.13 – 14. In a September 2005 deposition in Texas, Dr. Pohl stated the following:

Q: Okay. You've stated that most of your specialties are in the field of pathology and related fields. I take it you're not an oncologist, Doctor?

A: That's correct.

Q: And you're not a pulmonologist, correct?

A: Correct.

Q: Okay. You're not a certified B-reader?

A: That's correct.

Q: Are you an industrial hygienist, Doctor?

A: No.

Q: Epidemiologist?

A: No.

Q: Toxicologist?

A: Toxicology is part of a clinical pathology, so, yes, I'm familiar with toxicology.

Q: Well, my question is: Would you consider yourself a toxicologist?

A: I'm not a Ph.D. level toxicologist, no.

In fact, Dr. Pohl testified his background is only in pathology:

Q: And what specialties do you hold at this time?

A: I'm a specialist in clinical pathology, anatomic pathology, and cytopathology.

See Benson, Defendant's Affirmation in Support, Exhibit "D" at p.11.

Accordingly, the only basis for the opinions by Dr. Castleman and Dr. Pohl is their review of numerous medical, scientific and corporate publications, articles and documents, unpublished information available from the U.S. government archives, the archives of scientists and the archives of institutions that worked for and with asbestos companies.

A. Neither Dr. Castleman nor Dr. Pohl Possess The Skills, Training, Education, Knowledge Or Experience To Offer Opinions Regarding Defendant's Knowledge Regarding The Dangers Of Asbestos

To the extent that Dr. Castleman and Dr. Pohl intend to rely on their review of medical, scientific and other technical articles, publications and documents in rendering opinions regarding the state of the art and Defendant's knowledge regarding the hazards of asbestos, they lack the skills, training education, knowledge or experience to do so.

In fact, Dr. Castleman's testimony has previously been precluded on this basis. In Rutkowski v. Occidental Chem. Corp., No. 83 C 2339, 1989 WL 32030 (N.D. Ill. Feb. 16, 1989), attached hereto as Exhibit "E," the United States District Court for the Northern District of Illinois granted Defendant's motion *in limine* to bar Dr. Castleman from testifying precisely because Dr. Castleman lacked the "knowledge, skill, experience, training and education" necessary to assist the trier of fact to understand the evidence. Id. at *1. In Rutkowski, Plaintiffs intended to offer Dr. Castleman – just as Plaintiffs intend here – to testify regarding the existence and availability of numerous articles that discussed the hazards of exposure to asbestos dust and the knowledge defendant had or should have had regarding the dangers of asbestos. In barring Dr. Castleman's testimony, the Court held that:

[a]s a librarian of asbestos research, he may well have amassed an impressive library of medical literature on the subject (of asbestos dust and mesothelioma). However, Dr. Castleman lacks the medical background and experience to evaluate and analyze the articles in order to identify which parts of the articles best summarize the authors' conclusions. Furthermore, because he is not a medical expert, Castleman is not qualified to testify as to

whether the sources which published the articles are well known or how the articles were received by members of the medical community when they were first published.

* * *

Castleman is not qualified to describe the contents of the articles or the conclusions reached by the authors. Rather, the introduction of what promises to be a long list of medical articles on the subject of asbestos hazards might unduly prejudice Defendants' case by creating, without supporting evidence, the impression in the jury's mind that knowledge of asbestos hazards were commonplace at the time If Plaintiff desires to create that impression, she should proffer a qualified expert witness who will clarify the contents of the articles for the jury, describe the sources which published the articles, and explain the reaction of the medical community to the articles when they were published.

Id. at *1.

Similarly in In re Related Asbestos Case, 543 F.Supp. 1142 (N.D. Cal. 1982), the Court for the Northern District of California granted defendant's motion to deny Dr. Castleman the status of an expert witness. In so holding, the Court stated that:

[W]e are not persuaded that Mr. Castleman, as a lay person, possesses the expertise necessary to read complex, technical medical articles and discern which portions of the articles would best summarize the authors' conclusions. Moreover, even if the articles did contain discrete summaries of their contents which could be read by Mr. Castleman, Plaintiffs concede that Mr. Castleman would be unable to describe the reaction of the medical community to the articles at the time they were first published.

Id. at 1149. See also Celotex Corp. v. Tate, 797 S.W.2d 197, 202 (Tex. Ct. App. 1990) (trial court granted defendant's motion to limit Castleman's testimony to matters concerning existence of medical articles, as distinguished from testimony concerning interpretation and contents of those articles); Threadgill v. Manville Corp. Asbestos Disease Compensation Fund Civ., A. No. 88-161, 1990 WL 294271 (D. Del. July 27, 1990) *rev'd on other grounds* 928 F.2d

1366 (3d Cir. 1991) (court held that trial court properly did not permit Dr. Castleman to testify that corporation fraudulently concealed its knowledge of asbestos hazards); Burgess v. Abex Corp., 725 N.E.2d 792, 796 (Ill. App. Ct. 2000) (court held that Dr. Castleman improperly testified regarding defendant corporations' knowledge of hazards of asbestos and failure to tell its workers about such hazards).

Additionally, in the case of Polito v. DaimlerChrysler Corp., Index No. 1-2001-008216, filed in the New York Supreme Court, Monroe County, Justice Raymond E. Cornelius, recognizing that Dr. Castleman is not qualified to offer testimony on the subjects about which he was expected to testify and that many of the documents about which he planned to testify do not require expert testimony, severely limited Dr. Castleman's testimony at trial. Justice Cornelius did not permit Dr. Castleman to testify regarding the substance of the documents which he reviewed or his interpretation of those documents. See Transcript of Proceeding In Re: Polito v. DaimlerChrysler Corp., Index No. 1-2001-008216, New York Supreme Court., attached hereto as Defendant's Affirmation in Support, Exhibit "F."

Interestingly, in Benson v. United States, Chief Justice George Z. Singal of the District of Maine discredited Dr. Pohl's expert testimony, presumably in his area of expertise, pathology. See Defendant's Affirmation in Support, Exhibit "D." In that case, Justice Singal stated:

Plaintiff presented expert testimony by Dr. Douglas Pohl . . . to prove that Benson's cheek tumor was the primary source of his cancer.

The Court credits the testimony of Defendant's experts over that of Plaintiff's.

Benson v. U.S., Docket No. 02-CV-6-B-S, District of Maine (May 2002), Defendant's Affirmation in Support, Exhibit "D."

Neither Dr. Pohl nor Dr. Castleman possesses any expertise that qualifies them to interpret and testify about asbestos exposure levels based on historical literature, medical documents and other scientific and technical documents, as well as alleged knowledge by the Defendant regarding the effects of inhalation of asbestos fibers based on those documents.

Accordingly, Dr. Castleman and Dr. Pohl should be precluded from testifying as expert witnesses in this action regarding the issue set out by Plaintiff. See *Joachim v. Flanzig*, 3 Misc.3d 371, 378-379, 773 N.Y.S.2d 267, 274-75 (Sup. Ct. Nassau Co. 2004) (precluding defendants' expert accountant who had no legal training, education, skill, knowledge or experience from rendering opinion relating to legal relationship between partners in partnership); *Postlethwaite v. United Health Services Hosp., Inc.*, 5 A.D.3d 892, 895, 773 N.Y.S.2d 480, 483 (3d Dep't 2004) (precluding medical expert with expertise in anesthesiology and pharmacology from testifying whether surgeon and gastroenterologist properly diagnosed and treated plaintiff).

B. The Testimony of Dr. Castleman and Dr. Pohl Should Be Precluded Because Their Opinions Are Not The Proper Subject Of Expert Testimony

"[A] predicate for the admission of expert testimony is that its subject matter involves information or questions beyond the ordinary knowledge and experience of the trier of the facts." Matott, 48 N.Y.2d at 459, 423 N.Y.S.2d at 647. "Absent an inability or incompetence of jurors to comprehend the issues and evaluate the evidence, the opinions of experts 'which intrude on the province of the jury to draw inferences and conclusions, are both unnecessary and improper'." Nevins v. Great Atl. and Pac. Tea Co., 164 A.D.2d 807, 807-8, 559 N.Y.S.2d 539, 540 (1st Dep't 1990) (citations omitted). In *DeLong v. County of Erie*, 60 N.Y.2d 296, 307, 469 N.Y.S.2d 611, 617 (1983), the Court of Appeals stated that the guiding principle in determining the admissibility of expert testimony "is that expert testimony is proper when it would help to

clarify an issue calling for professional or technical knowledge, possessed by the expert and beyond the ken of the typical juror.” Id. (citations omitted.)

Here, to the extent that Dr. Castleman and Dr. Pohl intend to rely upon the review of corporate records, trade publications and other non-medical or scientific articles, journals or documents in rendering opinions in this case, their testimony should be precluded because the review of these documents does not require any particular expertise. Rather, these documents are easily understood by the jury without the assistance of expert testimony. See Threadgill v. Manville Corp. Asbestos Disease Compensation Fund, 1990 WL 294271 *4 (holding that the trial court properly found that “Dr. Castleman could not give any insight into [the documents he reviewed] that the jury, in looking at the documents ... can’t give”). See also Tassin v. Sears Roebuck & Co., 946 F. Supp. 1241, 1252-53 (M.D. La. 1996) (holding that documents such as correspondence and minutes of meetings are not technical, and do not require expert testimony to make them comprehensible to a jury).

Even if the review of these documents did require some type of expertise, nothing in either Dr. Castleman’s or Dr. Pohl’s education, training or experience qualifies them, more than any layperson, to review and interpret these types of records. In In re Diet Drugs Prods. Liab. Litig., No. MDL 1203, 2000 WL 876900 at *9 (E.D. Pa. June 20, 2000), the court, in cases involving the health risks and benefits of the diet drugs Pondimin and Redux, precluded plaintiffs’ expert witnesses from testifying regarding corporate intent. The court held that, although plaintiffs’ expert witnesses were qualified in particular scientific disciplines, they did not have “knowledge or even experience in the manner in which corporations and the pharmaceutical marketplace react, behave or think regarding their non-scientific goals of maintaining a profit-making organization that is subject to rules, regulations, standards, customs

and practices among competitors and influenced by shareholders or public opinions.” Id. at *9. Likewise, Dr. Castleman and Dr. Pohl do not have any knowledge regarding these topics or any other subjects regarding corporate practices and behaviors that qualify them to testify regarding corporate and trade association documents in this case.

Should Dr. Castleman and Dr. Pohl be permitted to testify about such documents, they would improperly usurp the role of the jury by offering interpretation of lay documents. See Franco v. Muro, 224 A.D.2d 579, 579, 638 N.Y.S.2d 690, 691 (2d Dep’t 1996) (holding that the maintenance of walkway to private house was not subject calling for technical knowledge possessed by expert and beyond ken of that typical juror; therefore, to permit expert to testify that walkway was not properly maintained would permit expert to determine ultimate issue in case and usurp function of the jury); In re Diet Drugs Prods. Liab. Litig., No. MDL 1203, 2000 WL 876900 at *9 (ED. Pa. June 20, 2000) (court precluded physicians from offering expert opinions regarding defendants’ corporate intent because they were unqualified to render such opinions and it was the role of the jury to review the admissible evidence and determine the issues).

In Tassin, plaintiff’s expert witness, who was an engineer, intended to offer the opinion at trial, based on records of the Power Tool Institute, that power tool manufacturers conspired with each other and refused to incorporate safety devices in certain fixed and hand-held tools. The expert witness’s opinion was based on his review of thousands of pages of minutes, correspondence and memoranda of the Power Tool Institute. The court held that the expert’s testimony was inadmissible because the jury was capable of reviewing the Power Tool Institute documents and reaching its own conclusions regarding them without any need for expert testimony. The court stated that:

[d]ocuments of this type are not technical and do not require expert engineering testimony to make them comprehensible to a jury. For this reason, the expert witness's testimony about these documents is not necessary to assist the trier of fact to understand a fact in issue.

Tassin, 946 F. Supp. at 1252. Likewise, the jury in this action is capable of reviewing all of the corporate, trade association and other non-technical documents and reaching its own conclusions regarding their meaning and significance in this case.

Dr. Castleman and Dr. Pohl therefore must be precluded from testifying beyond their competence and where, as here, the jury is capable of reviewing the material collected by Dr. Castleman and Dr. Pohl to reach their own conclusions regarding state-of-the-art of alleged corporate knowledge.

POINT II

THE TESTIMONY OF DR. CASTLEMAN AND DR. POHL SHOULD BE PRECLUDED BECAUSE THE DOCUMENTS AND INFORMATION ON WHICH THEY RELY ARE NOT A PROPER BASIS FOR EXPERT TESTIMONY

To be admissible, expert opinion evidence must be based on: (1) personal knowledge of the facts upon which the opinion rests; (2) facts and materials in evidence, real or testimonial; (3) material not in evidence provided that the out-of-court material is derived from a witness subject to full cross-examination; or (4) material not in evidence provided the out-of-court material is of the kind accepted in the profession as a basis in forming an opinion and the out-of-court material is accompanied by evidence establishing its reliability. See Wagman v. Bradshaw, 292 AD.2d 84, 86-87, 739 N.Y.S.2d 421,423 (2d Dep't 2002).

Here, Drs Castleman and Pohl rely on none of the foregoing. It is indisputable that they do not have personal knowledge of the facts upon which they base their opinions, and that their opinions are not based on out of court material derived from a witness subject to full cross-

examination. Rather, the bases for their opinions are the voluminous documents that they have reviewed.

As set forth more fully below, neither Dr. Castleman nor Dr. Pohl can show that any of the materials or information on which they rely as a basis for their testimony constitutes (a) facts and materials in evidence; or (b) material not in evidence that is the kind accepted in their profession as a basis in forming an opinion and is accompanied by evidence of its reliability.

A. Testimony By Dr. Castleman and Dr. Pohl Should Be Excluded Because They Are Based On Inadmissible Documents And Information Rather Than Admissible Facts And Materials

The documents and information on which Dr. Castleman and Dr. Pohl will rely in rendering their opinions in this action are inadmissible. The documents are not authenticated and the documents and other information on which they rely are inadmissible hearsay. Accordingly, there is no proper basis for either Dr. Castleman's or Dr. Pohl's testimony and, therefore, it must be excluded.

1 The Documents and Materials On Which Dr. Castleman and Dr. Pohl Rely Are Unauthenticated and, Therefore, Inadmissible

Before a document or other evidence may be admitted into evidence, the authenticity of the evidence must be established. See generally Richard T. Farrell, *Prince, Richardson on Evidence* § 4-203 (11th Ed. 1995) ("The proponent of an item of real evidence must demonstrate its genuineness by clear and convincing evidence, citing *People v. McGee*, 49 N.Y.2d 48, 59, 424 N.Y.S.2d 157, 163 (1979) ("authenticity is established by proof that the offered evidence is genuine and that there has been no tampering with it") and *People v. Julian*, 41 N.Y.2d 340, 343-344, 392 N.Y.S.2d 610, 612 (1977). See also *People v. Taya*, 96 A.D.2d 1045, 1046, 466 N.Y.S.2d 458, 459 (2d Dep't 1983) ("In ascertaining whether a proper foundation has been laid for the introduction of real evidence, accuracy is the focus of the inquiry."). The foundation

necessary to establish authenticity may differ according to the nature of the evidence that is sought to be admitted. McGree, 49 N.Y.2d at 59, 424 N.Y.S.2d at 163.

The documents and materials on which Dr. Castleman and Dr. Pohl base their opinion are unauthenticated and, therefore, inadmissible at trial. See People v. Brown, 216 A.D.2d 737, 738, 628 N.Y.S.2d 835, 836 (3d Dep't 1995) (trial court committed reversible error in admitting photograph where not properly authenticated); People v. Boswell, 167 A.D.2d 928, 929, 562 N.Y.S.2d 289,290(4th Dep't 1990) (court held that trial court erred in admitting handwritten note that was not properly authenticated); Brady v. Comprehensive Omnibus Corp., 5 N.Y.S.2d 781 (App. Term 1st Dep't 1938) ("court committed serious error in admitting into evidence the hospital records and X-ray plates without proper authentication").

Specifically, in In Re Mississippi Asbestos Cases, Dr. Castleman testified that he has not verified the authenticity of any of the documents upon which he relies. In that opinion, Dr. Castleman conceded the following:

- Q. Well, in terms of your testimony with respect to the history of asbestos, the knowledge of potential dangers, the actual dangers caused by asbestos, the information comes from various documents that you've collected over the years and real, correct?
- A. It basically does come from documents and the analysis of those documents, given what I know about the history of the field of occupational medicine as well to understand the personalities, the institutions, the governmental agencies and how it all sort of went together.
- Q. First off the documents, where did you get those from?
- A. Numerous sources. The time that I could remember where all of my documents came from has long passed. They came from Plaintiffs lawyers, they came from defense lawyers, they came from various libraries, things like that.

Q. Have you verified the authenticity of all of these documents you've relied on?

A. I haven't individually done that. But I have never had any reason to believe that any document that I've been presented with was a fraudulent or falsified document in all of these years.

Q. How about, do you know whether it's complete or not?

A. Well, very often they're not complete. You know, they might be page a in a deposition or something like that. I'm not trying to make some kind of world record in the volume of files that I keep on all of this stuff.

Q. These various documents you've relied on, have you reviewed --have you talked to the authors of these documents?

A. In some cases I have. In most cases I haven't.

See Dr. Castleman's Deposition Testimony, April 2004, Exhibit "D".

Dr. Castleman, by his own admission, is unable to authenticate the documents upon which he relies. Rather, he blatantly states that he has not verified the authenticity of any of these documents. The fact that he never has had "any reason to believe that any document that [he has] been presented with was a fraudulent or falsified document" is wholly insufficient to satisfy the evidentiary requirements of authentication under New York Law.

Plaintiffs may argue that, at least with respect to those documents that are more than 30 years old, authenticity is established under the ancient document rule. However, under New York law, in order to authenticate a document under the "ancient document" rule, the party seeking to admit the document must show that it is more than 30 years old, "was in the possession of the natural custodian" and is "free from indications of fraud or invalidity." See generally Richard T. Farrell, *Prince, Richardson on Evidence* § 3-124 (11th Ed. 1995). The party who seeks admission of old documents must prove that the documents came from the

proper custodian of records or were otherwise found where expected to be. Tillman v. Lincoln Warehouse Corp., 72 A.D.2d 40,44,423 N.Y.S.2d 151, 153 (1st Dep't 1979) (under ancient document rule, it must be proven that document came from proper custody). See Martez v. Fibreboard Corp., 765 F.2d 456,464-465 (5th. Cir. 1985) (under federal ancient document rule, court excluded from evidence memoranda exchanged between various employees of asbestos manufacturer concerning health risks associated with asbestos products because plaintiff failed to introduce evidence that memoranda were found in expected place, *i.e.*, the corporate records of Owens-Corning; court also excluded minutes of asbestos manufacture's trade organization because plaintiff failed to satisfy authentication requirements of ancient document rule).

Accordingly, in order for the documents on which Dr. Castleman relies to be admissible as ancient documents, plaintiffs have to establish that these documents came from their proper custodians. Plaintiffs, however, will not be able to make this showing given Dr. Castleman's testimony that he obtained the documents on which his testimony is based from numerous sources and "that the time that he could remember where all [his] documents came from has long passed. They came from plaintiffs lawyers, they came from defense lawyers, they came from various libraries, things like that."

To the extent that Dr. Pohl is unable to authenticate documents on which he relies as a basis for his opinion, his testimony should be similarly precluded.

2 The Documents and Information On Which Dr. Castleman and Dr. Pohl Rely Are Inadmissible Hearsay

The documents and information on which Dr. Castleman and Dr. Pohl rely are inadmissible because they are hearsay and, in numerous instances, hearsay within hearsay. People v. Acomb, 87 A.D.2d 1, 6, 450 N.Y.S.2d 632, 635 (4th Dep't 1982) ("hearsay rule prohibits the use of statements made out of court when offered to prove the truth of the facts

asserted in the statement"). See, e.g., Exhibit "B" of Defendant's Affirmation in Support at pp. 29, 36-37, 40-41, 45-55 (examples of hearsay objections made and sustained in the Polito case, as well as statements by the Court regarding the fact that the documents on which Dr. Castleman relies are also hearsay).

In order for any of the documents or information upon which Dr. Castleman and Dr. Pohl rely to be a proper basis for testimony, Plaintiffs must establish that the documents or information are not hearsay or fall within one of the exceptions to the hearsay rule. See Hornbrook v. Greek Peak/Peak Resorts, Inc., Index No. 99-1172, 2002 WL 1967928 (Sup. Ct. Tompkins Co. May 29, 2002) (expert witness "may not rely upon the out-of-court records, opinions or impression of treating doctors which were not admitted into evidence under an independent exception to the rule against hearsay"). Plaintiffs have not, and cannot, admit these documents and information under any hearsay exception, and, therefore, Dr. Castleman's and Dr. Pohl's testimony must be precluded.

Plaintiffs may claim that the documents on which Dr. Castleman and Dr. Pohl rely are not hearsay because they are offered not for the truth of the matter asserted but to show that the Defendant had notice of the dangers of asbestos. However, before Plaintiffs can argue that the documents are not hearsay because they are being used to show notice, they must show that Defendant was at least inferentially put on notice by the documents. See George Celotex Corp., 914 F.2d 26, 30 (2d Cir. 1990) (court stated that Philip Carey could not have been put on notice by Hemeon Report because there was no proof at trial that Philip Carey ever saw the unpublished report or that it reasonably should have seen it as part of published literature in the industry). This is another evidentiary hurdle that Plaintiffs will not be able to overcome.

CONCLUSION

For the foregoing reasons, Defendants respectfully request that this Court grant their motion to preclude the testimony of Dr. Castleman and Dr. Pohl or, in the alternative, require that Plaintiffs produce their experts for deposition testimony and that a *Frye* hearing be conducted to determine if Plaintiff's purported expert witnesses may offer the disclosed "state-of-the-art" opinion. No prior request has been made to this or any other Court for the relief requested herein.

Dated: Elmsford, NY
August 22, 2007

Respectfully submitted,

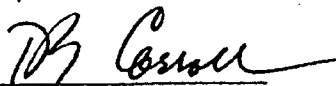
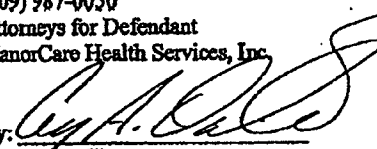
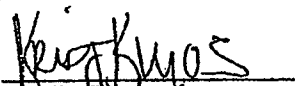
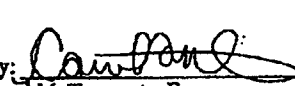
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HOAGLAND, LONGO, MORAN, DUNST & DOUKAS, LLP 40 Paterson Street New Brunswick, New Jersey 08901 (732) 545-4717 Attorneys for Defendant Fisher Scientific International Inc. By:  Kristy Kulina Lyons	MARKS, O'NEILL, O'BRIEN & COURTNEY, P.C. 530 Saw Mill River Road Elmsford, NY 10523 Attorneys for Defendants VWR International, Inc. and Univar USA Inc. By:  Carol M. Tempesta, Esq.

Exhibit A

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&
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* Of Counsel
‡ Also admitted in CT
* Also admitted in FL
‡ Also admitted in GA
¶ Also admitted in NJ
§ Also admitted in DC
‡ Also admitted in NJ and CT
- Also admitted in NJ and PA
- Also admitted in NJ and DC
§ Admitted only in VA and PA
‡ Also admitted in VA and NJ
* Also admitted in DC and TX
‡ Also admitted in DC, MD, PA and VA
§ Also admitted in DC and VA
‡ Admitted only in TX

Via Regular Mail

April 13, 2007

TO: All Counsel per attached rider

Re: Plaintiffs' Expert Witness List

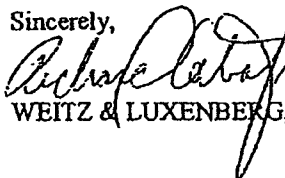
Dear Counselors:

Enclosed please find Plaintiffs' Expert Witness List for the May 2007, in *extremis* trial cases.

Please be advised that plaintiffs reserve their right to (1) amend and/or supplement this list, as necessary and applicable; (2) call witnesses named in defendants' witness lists, answers to interrogatories and depositions; (3) amend and/or supplement this list as to those defendants who have failed to respond to Interrogatories as provided in the Amended Case Management Order; and (4) adopt any witness list set forth by any other plaintiff's firm and call any witness listed thereto.

If you have any questions regarding this matter, please feel free to contact the undersigned.

Sincerely,


WEITZ & LUXENBERG, P.C.

Richard Cabo Jr.



W-INCH-30

printed 4/13/07

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

IN RE: NEW YORK CITY ASBESTOS LITIGATION

ALL MAY 2007 IN-EXTREMIS CASES

Index #: 116650/03

EXPERT WITNESS
DISCLOSURE
PURSUANT TO
CPLR 3101 (d)

PLEASE BE ADVISED, that plaintiffs intend at the time of Trial to call to the witness stand,
live or by deposition, the following individuals:

CHARLES AY

a) Mr. Ay is a former asbestos worker/insulator who worked in that trade at various locations including, shipyards, power plants, refineries and commercial construction sites. He would be called to testify only in those cases in which the plaintiff alleges exposure to asbestos used in connection with pumps, turbines, boilers and related equipment which exposure is challenged by defendant(s) or may be challenged by defendant(s).

b) He is certified by the United States Environmental Protection Agency to detect asbestos in place and on the proper removal methods of such asbestos. His certification and training includes methods of industrial hygiene, detection and identification of asbestos and non-asbestos materials, and on the risks posed by asbestos.

c) He received training from the U.S. Navy on methods of asbestos detection and removal on board ships and in shore side facilities. Mr. Ay may testify as to plaintiff's circumstance, opportunity for exposure and generally to practices, procedures, the types of ships, the types of asbestos products used in shipyards, on board ships, in Marine construction and at industrial sites, including but not limited to refineries and commercial building sites. He may testify as to the manner in which asbestos containing products were used, the tendencies of asbestos-containing products to release dust into the atmosphere, and the manner of proper removal and disposal.

BARRY CASTLEMAN, Sc.D

Dr. Castleman is an environmental consultant and may testify as to state-of-the-art issues. Specifically, Dr. Castleman will testify concerning the availability of scientific information as to the hazards of asbestos, when information concerning those hazards became available, the nature of the information that became available, the form of available scientific information and methods of its retrieval. Specifically, Dr. Castleman will trace the history of knowledge of asbestos hazards from the earliest of times, and in the modern era and will talk about the roles of any publications by various trade associations including, but not limited to the Industrial Hygiene Foundation, The National Safety Council, The American Society of Mechanical Engineers and The American Ceramics Society. In addition, Dr. Castleman may testify as to the propensity of various asbestos containing products to release asbestos dust into the atmosphere, as well as the levels at which asbestos will produce various diseases. Dr. Castleman has been deposed and has previously testified on these issues on many occasions and such testimony is available to defendants. Dr. Castleman will also testify as to corporate knowledge of the hazards of asbestos and conduct, including attempts to suppress knowledge and conspiratorial efforts, and trade association's knowledge, conduct and suppression of information. Dr. Castleman's book on the above subjects details the scope of his testimony and is publicly available.

RICHARD L. HATFIELD

Mr. Hatfield is an industrial hygienist who specializes in the analysis of asbestos in various types of environments. He will testify regarding tests performed relating to the nature and qualification of asbestos that is released as a result of working with asbestos-containing materials. Specifically, Mr. Hatfield will testify regarding the general background levels of asbestos release; bystander levels of exposure of the fiber release; air samples in the personal breathing zone generated from the fiber release; and fiber release and contamination on clothing and other personal contamination. Mr. Hatfield has been deposed and has previously testified on these issues on many occasions and such testimony is available to defendants.

WILLIAM LONGO, PH.D.

a) Dr. Longo received his Bachelor of Science from the University of Florida in 1977. He received his Masters of Science in Materials Science and Engineering from the University of Florida in 1980 and his Ph.D. in Materials Science and Engineering from the University of Florida in 1983.

b) Dr. Longo is a scientist specializing in the measurement and analysis of materials and determining the constituent ingredients in materials, and characterizing those materials and ingredients. Dr. Longo has examined and tested various asbestos products. Dr. Longo has examined the amount of dust released by mixing and/or manipulating various asbestos-containing products. These analyses include current and past techniques used to measure asbestos content in dust. Dr. Longo may testify on his results from the release of asbestos-containing dust from the various products that he has tested by either, the mixing, application, removal or normal use of those products. Dr. Longo has quantified the asbestos release generated from the aforementioned uses of these materials. Dr. Longo may testify regarding the general background levels of asbestos release, bystander levels of exposure of the fiber release, air samples in the personal breathing zone generated from the fiber release and fiber release and contamination on clothing and other personal contamination. He may compare his result of these dust studies by analysis using both particles per cubic foot, fibers per cc, as well as current and past techniques used to analyze asbestos content in dust. Dr. Longo may testify that the levels of asbestos dust measured during these tests exceeded established TLV's and PEL's in many instances. Dr. Longo may compare and contrast his findings with other scientific findings. Dr. Longo may offer opinions concerning testing which has been performed on behalf of defendants or the lack of testing of defendants' products. Dr. Longo will testify regarding his workplace simulations for gasket removal and installation, brake work and tile work. Dr. Longo will testify consistent with the reports available for each test.

c) Dr. Longo's testimony is based upon his education, expertise, experience, review of literature, digests, case materials, records, notes, pleadings and documents produced in asbestos litigation.

STEVEN MARKOWITZ, M.D.

a) Dr. Markowitz is a Professor and Director of the Center of the Biology of Natural Systems at Queens College, City University of New York.

b) Dr. Markowitz, certified by the American Board of Preventative Medicine in Occupational Medicine and by the American Board of Internal Medicine in Internal Medicine will testify based upon his review of Plaintiff's medical records, Plaintiff's interrogatory responses and other materials as outlined in his reports. Dr. Markowitz may testify with regard to Plaintiff's diagnosis. Dr. Markowitz may also testify that plaintiff's diagnosis and symptoms are related to, and caused by, his exposure to asbestos, may testify generally about the plaintiff's medical treatment history; his asbestos exposure history; the nature of his diagnosis, and its causal relationship with the plaintiff's occupational exposure to asbestos. Dr. Markowitz may also testify that plaintiff's diagnosis and symptoms are related to and caused by his exposure to asbestos (including minimal amounts of asbestos) and that each and every exposure contributed to his diagnosis. Additionally, Dr. Markowitz may testify that plaintiff has incurred medical expenses as a result of his asbestos-related disease and that said medical bills are reasonable and necessary. Dr. Markowitz may testify that Plaintiff has required in the past, treatment and/or hospitalization (and the reasonable medical expenses therefore) as a result of his exposure to asbestos, asbestos-related disease.

c) Additionally, Dr. Markowitz may also testify as to the various diagnostic procedures and treatments provided to the plaintiff, as well as his pain and suffering during the course of such diagnostic and treatment modalities and the pain and suffering commonly associated with progression of the processes until the time of his death. Dr. Markowitz may testify that based on epidemiological studies, plaintiff's asbestos-related disease was caused by his exposure to Defendants' asbestos-containing products. Dr. Markowitz may testify regarding exposure levels of asbestos, at what levels asbestos may cause disease, and as to when this was known in the medical and scientific literature. Dr. Markowitz may also testify as to the hazardous nature of asbestos and asbestos-containing products as a result, that such

asbestos and/or asbestos-containing products are unreasonably dangerous. Further, Dr. Markowitz may testify concerning the increased risk of cancer faced by asbestos exposed workers, including brake workers and the epidemiological link between asbestos and cancer. More specifically, Dr. Markowitz may testify about the medical and scientific literature as it relates to the risk of mesothelioma in human beings and animals in relation to exposure to asbestos, and as such literature relates to issues such as "Low Dose"; "Encapsulation"; "Fosterite"; and the propensity for development of mesothelioma as a result of exposure to Chrysotile asbestos. Dr. Markowitz may testify concerning fiber types of asbestos generally and that all types of asbestos fibers are capable of causing all asbestos-related diseases and all forms of asbestos-related cancers.

d) Dr. Markowitz may opine as to the causal relationship between occupational asbestos exposure and disease of latency related thereto, such as mesothelioma. Dr. Markowitz is expected to rely on a number of medical articles, his own clinical and medical experience, and his evaluation of the relevant body of medical literature on this subject. Dr. Markowitz's testimony is based upon his experience, education, expertise, review of the medical, scientific and industrial hygiene literature case materials, pleadings, depositions and documents from this and other asbestos litigation.

JACQUELINE MOLINE, M.D., MSc

a) Dr. Moline, Board Certified in Internal Medicine and Preventative Medicine, with an Occupational Medicine specialty, may testify based upon her clinical experience as a physician, as well as her research in the field.

b) Dr. Moline, certified by the American Board of Preventative Medicine in Occupational Medicine and by the American Board of Internal Medicine in Internal Medicine will testify based upon his review of Plaintiff's medical records, Plaintiff's interrogatory responses and other materials as outlined in his reports. Dr. Moline may testify with regard to Plaintiff's diagnosis. Dr. Moline may also testify that plaintiff's diagnosis and symptoms are related to, and caused by, his exposure to asbestos, may testify

generally about the plaintiff's medical treatment history; his asbestos exposure history; the nature of his diagnosis, and its causal relationship with the plaintiff's occupational exposure to asbestos. Dr. Moline may also testify that plaintiff's diagnosis and symptoms are related to and caused by his exposure to asbestos (including minimal amounts of asbestos) and that each and every exposure contributed to his diagnosis. Additionally, Dr. Moline may testify that plaintiff has incurred medical expenses as a result of his asbestos-related disease and that said medical bills are reasonable and necessary. Dr. Moline may testify that Plaintiff has required in the past, treatment and/or hospitalization (and the reasonable medical expenses therefore) as a result of his exposure to asbestos, asbestos-related disease.

c) Additionally, Dr. Moline may also testify as to the various diagnostic procedures and treatments provided to the plaintiff, as well as his pain and suffering during the course of such diagnostic and treatment modalities and the pain and suffering commonly associated with progression of the processes until the time of his death. Dr. Moline may testify that based on epidemiological studies, plaintiff's asbestos-related disease was caused by his exposure to Defendants' asbestos-containing products. Dr. Moline may testify regarding exposure levels of asbestos, at what levels asbestos may cause disease, and as to when this was known in the medical and scientific literature. Dr. Moline may also testify as to the hazardous nature of asbestos and asbestos-containing products as a result, that such asbestos and/or asbestos-containing products are unreasonably dangerous. Further, Dr. Moline may testify concerning the increased risk of cancer faced by asbestos exposed workers, including brake workers and the epidemiological link between asbestos and cancer. More specifically, Dr. Moline may testify about the medical and scientific literature as it relates to the risk of mesothelioma in human beings and animals in relation to exposure to asbestos, and as such literature relates to issues such as "Low Dose"; "Encapsulation"; "Fosterite"; and the propensity for development of mesothelioma as a result of exposure to Chrysotile asbestos. Dr. Moline may testify concerning fiber types of asbestos generally and that all types of asbestos fibers are capable of causing all asbestos-related diseases and all forms of asbestos-related cancers.

d) Dr. Moline may opine as to the causal relationship between occupational asbestos exposure and disease of latency related thereto, such as mesothelioma. Dr. Moline is expected to rely on a number of medical articles, her own clinical and medical experience, and her evaluation of the relevant body of medical literature on this subject. Dr. Moline testimony is based upon her experience, education, expertise, review of the medical, scientific and industrial hygiene literature case materials, pleadings, depositions and documents from this and other asbestos litigation.

ELAINE PANITZ, MD, MPH, FACP, FCPM

a) Dr. Panitz received her bachelor's degree from Vassar College in 1968. She received her medical degree from Harvard in 1972 and her Master's in Public health from Wisconsin in 1998.

b) Dr. Panitz, certified by the American Board of Preventative Medicine in Occupational Medicine and by the American Board of Internal Medicine in Internal Medicine will testify based upon his review of Plaintiff's medical records, Plaintiff's interrogatory responses and other materials as outlined in his reports. Dr. Panitz may testify with regard to Plaintiff's diagnosis. Dr. Panitz may also testify that plaintiff's diagnosis and symptoms are related to, and caused by, his exposure to asbestos, may testify generally about the plaintiff's medical treatment history; his asbestos exposure history; the nature of his diagnosis, and its causal relationship with the plaintiff's occupational exposure to asbestos. Dr. Panitz may also testify that plaintiff's diagnosis and symptoms are related to and caused by his exposure to asbestos (including minimal amounts of asbestos) and that each and every exposure contributed to his diagnosis. Additionally, Dr. Panitz may testify that plaintiff has incurred medical expenses as a result of his asbestos-related disease and that said medical bills are reasonable and necessary. Dr. Panitz may testify that Plaintiff has required in the past, treatment and/or hospitalization (and the reasonable medical expenses therefore) as a result of his exposure to asbestos, asbestos-related disease.

c) Additionally, Dr. Panitz may also testify as to the various diagnostic procedures and treatments provided to the plaintiff, as well as his pain and suffering during the course of such diagnostic and treatment modalities and the pain and suffering commonly associated with progression of the processes until the time of his death. Dr. Panitz may testify that based on epidemiological studies, plaintiff's asbestos-related disease was caused by his exposure to Defendants' asbestos-containing products. Dr. Panitz may testify regarding exposure levels of asbestos, at what levels asbestos may cause disease, and as to when this was known in the medical and scientific literature. Dr. Panitz may also testify as to the hazardous nature of asbestos and asbestos-containing products as a result, that such asbestos and/or asbestos-containing products are unreasonably dangerous. Further, Dr. Panitz may testify concerning the increased risk of cancer faced by asbestos exposed workers, including brake workers and the epidemiological link between asbestos and cancer. More specifically, Dr. Panitz may testify about the medical and scientific literature as it relates to the risk of mesothelioma in human beings and animals in relation to exposure to asbestos, and as such literature relates to issues such as "Low Dose"; "Encapsulation"; "Fosterite"; and the propensity for development of mesothelioma as a result of exposure to Chrysotile asbestos. Dr. Panitz may testify concerning fiber types of asbestos generally and that all types of asbestos fibers are capable of causing all asbestos-related diseases and all forms of asbestos-related cancers.

d) Dr. Panitz may opine as to the causal relationship between occupational asbestos exposure and disease of latency related thereto, such as mesothelioma. Dr. Panitz is expected to rely on a number of medical articles, her own clinical and medical experience, and her evaluation of the relevant body of medical literature on this subject. Dr. Panitz testimony is based upon her experience, education, expertise, review of the medical, scientific and industrial hygiene literature case materials, pleadings, depositions and documents from this and other asbestos litigation.

DOUGLAS POHL, M.D., Ph.D.

a) Dr. Pohl may testify as to the general medical concepts relating to asbestos diseases, their causation and the issue of the state-of-the-art of knowledge about the dangers of asbestos.

b) Specifically, Dr. Pohl will testify concerning the availability of scientific information as to the hazards of asbestos, when information concerning those hazards became available, the nature of the information that became available, the form of available scientific information and methods of its retrieval. Specifically, Dr. Pohl will trace the history of knowledge of asbestos hazards from the earliest of times, and in the modern era.

c) In addition, Dr. Pohl may testify as to the propensity of various asbestos containing products to release asbestos dust into the atmosphere, the levels at which asbestos will produce various diseases, as well as the propensity of all fiber types to produce disease. Dr. Pohl has been deposed and has previously testified on these issues on many occasions and such testimony is available to defendants. Dr. Pohl will also testify as to corporate knowledge of the hazards of asbestos and conduct, including attempts to suppress knowledge and conspiratorial efforts, and trade association's knowledge, conduct and suppression of information.

d. Dr. Pohl's testimony is based upon his experience, education, expertise, review of the medical, scientific and industrial hygiene literature case materials, pleadings, depositions and documents from this and other asbestos litigation.

Dated: New York, New York
April 13, 2007

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By: 

ERIK JACOBS

To: All Defendants per Attached Rider

As of 3/8/07

May 07 In-Extremis Service Rider

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As of 3/8/07

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2634 HILLSIDE HEIGHTS
GREEN BAY, WI 54311

AMERI-DOOR, INC., as successor-in-interest to and f/k/a ALGOMA DOOR, INC.
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GREEN BAY, WI 54311

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CINCINNATI, OH 45202-3717

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2400 5TH AVENUE
BLDG. 120
PITTSBURGH, PA 15222

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CINCINNATI, OH 45202-3717

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CT CORPORATION SYSTEM
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PHILADELPHIA, PA 19103

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41 STATE STREET
ALBANY, NY 12207

DAVIS & WARSHOW, INC.
57-22 49TH STREET
MASPETH, NY 11378

DUSING ASSOCIATES, INC., INDIVIDUALLY AND AS SUCCESSOR IN INTEREST AND F/K/A DUSING & HUNT, INC.
(1ST DIR.) FREDERICK C. DUSTING
393 HUMBOLD & PARKWAY
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GIANT SUPPLY CORP.
20 BROOKLYN AVENUE
MASSAPEQUA, NY 11758

GLAUBER PLUMBING SUPPLY CO., INC.
DREYER & TRAUB
90 PARK AVENUE
NEW YORK, NY 10016

GLAUBER, INC.
DREYER & TRAUB
90 PARK AVENUE
NEW YORK, NY 10016

GREENPOINT FRIEDLAND STEEL CORP.
UNKNOWN AT PRESENT TIME

GREENPOINT STEEL WAREHOUSE CORP.
C/O BENJAMIN HEFFNER
60 WALL STREET
NEW YORK, NY 10005

H.C. OSWALD SUPPLY CO., INC.
120 EAST 124 STREET
NEW YORK, NY 10035

HARCO LABORATORIES, INC., AS SUCCESSOR BY MERGER TO HARRIS INDUSTRIES, INC.
733 SUMMER STREET
STAMFORD, CT 06901

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POTTER COMPANY and PREMIER-POTTER COMPANY
3391 TOWN POINT DRIVE
SUITE 400
KENNESAW, GA 30144

HONDA MOTOR CO LTD.
2-1-1 MINAMI AOYAMA, MINATO-KU
TOKYO 107-8556- JAPAN

HONDA MOTOR PARTS SERVICE CO, LTD.
NO. 27-8, 6-CHOME JINGUMAE
SHIBUYA-KU 150
TOKYO, JAPAN

HONDA MOTOR PARTS SERVICE CO., LTD.
NO. 27-8, 6-CHOME JINGUMAE
SHIBUYA-KU 150
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I. BURACK, INC.
FANNY BURACK (1ST DIR.)
46 SOUTH 14TH AVENUE
MOUNT VERNON, NY 10550

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INTERNATIONAL HEATER COMPANY
THE CORPORATION TRUST CO.
277 PARK AVENUE
NEW YORK, NY 10017

J.A. GREEN CONSTRUCTION CORP.
UNKNOWN AT PRESENT TIME

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MAZDA MOTOR CORP.
7755 IRVINE CENTER
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EASTON, PA 18045

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41 STATE STREET
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